U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32029226

Date: JULY 18, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner, a native of South Africa and citizen of Australia, describes himself as "an innovative singer and songwriter of Pop R&B music" and "a proven leader at the top of the singing and songwriting field, combining several disciplines to create new types of music for the public and his fans." The Petitioner stated: "I wrote and sang the hit song, [redacted] which received GOLD Record Recognition. I also wrote and sang [the] hit song [redacted] which ranked in the Top 20 on the charts. I wrote, sang, and produced [redacted] which ranked as a #1 hit on the charts in the United States." The Petitioner stated that he "was recognized by the Grammys governing body" and "performed duets collaborating with global stars [redacted] When he filed the petition in June 2022, the Petitioner was in the United States as a B-2 nonimmigrant visitor.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met only of the criteria, pertaining to display. On appeal, the Petitioner asserts that he also meets two other criteria, relating to prizes and leading or critical roles. The Petitioner does not contest the Director's conclusions regarding published material and contributions, and therefore we consider the Petitioner to have waived appeal on those issues.[1]

Below, we will discuss the two criteria disputed on appeal.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

The Petitioner submitted a photograph showing three medals and a plaque, all showing a logo that reads "World Championships Performing Arts." The plaque also reads "Champion of the World 2009." Another photograph shows the Petitioner holding a trophy with the inscription "World Championships / 2009 / Grand Champion Performer of the World."

The Petitioner submitted a screenshot of an email message indicating that he had been nominated for an unspecified award from the Australian Independent Music Awards. The Petitioner submitted no further materials from the awarding entity to identify the award or specify whether the Petitioner had won it.

The Recording Industry of South Africa awarded the Petitioner a "Certified Gold Award" recognizing sales of 15,000 copies of the Petitioner's single [redacted] The materials do not identify any criteria for the award other than sales figures. The regulation does not indicate that every prize or award satisfies the criterion; the prize or award must be "for excellence in the field of endeavor." The record does not show that the awarding entity equates sales or popularity with excellence in the field.

The Petitioner also asserted that he was among "the top 50 finalists" on [redacted] in 2005, but he submitted no evidence from the producers of that program to confirm the claim or to establish that he received a prize or award as a result. Instead, the Petitioner submitted a recent letter from his manager, a recent letter from his record producer, and copies of online articles published in 2017 or later, all referring to his claimed appearance on [redacted] but producing no corroborating documentation.

The Director denied the petition, stating that the Petitioner had not submitted evidence to show that his claimed prizes and awards are nationally or internationally recognized, and that the prizes are for excellence in his field. The Director also observed that the photographs of "a 2009 'Champion of the World' award" do not show that the Petitioner received the award.

On appeal, the Petitioner maintains that he "provided evidence that he was presented with the 'Champion of the World' award. The evidence was provided via photographs of the award trophy and medals." We agree with the Director that these materials do not identify the Petitioner as the winner, and that the Petitioner has not established the significance of the award. The Petitioner notes that he also submitted "letters from [his] tour manager, talent manager, entertainment marketer, and producer . . . , and media articles." None of these materials are first-hand evidence of the Petitioner's receipt of the award. The writers of the letters claimed no involvement with the awarding organization, and they wrote their letters several years after the 2009 competition. Likewise, the submitted newspaper and online articles discussing the Petitioner's claimed award were all published in 2017 or later.

Furthermore, we agree with the Director that the Petitioner has not established the significance of the claimed award. The Petitioner asserts: "The World Championships of Performing Arts . . . has had a tremendous impact in the musical and performing arts industry," and "is referred to as the 'Talent Olympics.'" The Petitioner cites no evidence to support these claims except for a footnoted reference to the awarding organization's own website. The organization's own promotional materials are not evidence of recognition outside that organization. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007), aff'd 2009 WL 604888 (9th Cir. 2009) (concluding that we need not rely on an organization's self-serving promotional claims). The Petitioner has not shown that the World Championships of Performing Arts received significant media coverage in 2009, when he claims to have won, or at any other time. The assertion that some major celebrities won the same competition does not establish or imply that the award

enjoys the same recognition as its most prominent winners; that the celebrities are famous because they won the competition; or that the celebrities are representative examples of the caliber of participants.

On appeal, the Petitioner again cites his gold record award, but does not establish that the award is for excellence in the field. He also repeats his claim to have been a finalist on [redacted] but he identifies no evidence in the record that would confirm this claim first-hand or establish that status as a finalist is, itself, a nationally or internationally recognized prize or award for excellence in the field. Much of the Petitioner's appellate brief repeats earlier claims and arguments, without addressing specific issues that the Director raised in the denial notice.

For the above reasons, we agree with the Director that the Petitioner has not met his burden of proof regarding the requirements of the criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner asserted that his participation in various tours and competitions amounted to critical roles. We will discuss illustrative examples further below, but first we will address a more general point.

The wording of the regulation requires "a leading or critical role for organizations or establishments that have a distinguished reputation." The Petitioner initially listed several tours in which he participated in varying degrees, and stated: "it seems evident that roles with distinguished groups of people, tours, or festivals should qualify for this criterion as they essentially operate in a similar manor [sic] to distinguished organizations."

In the denial notice, the Director stated that the Petitioner did "not demonstrate how tours or events qualify as 'organizations or establishments.'" The Director continued:

> Additionally, were we to consider tours or events as organizations or establishments, contracted performances are not evidence of a leading role for an organization or establishment. You were never an employee of the claimed organizations or establishments, you played no role in their business decisions, and you are not a part of any distinguished reputation that they may have. Nor does the evidence establish that you played a critical role i.e. that you contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

The Director's reference to "significant importance to the outcome of the organization or establishment's activities" derives from 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

On appeal, the Petitioner does not address the Petitioner's conclusions. Instead, the Petitioner repeats several previous claims, adds new ones, and again uses language broader than the regulation, stating that "he performed in a critical role for . . . distinguished entities and during distinguished events."

The Petitioner has cited no support for this interpretation of the regulation. An entity that organizes tours and festivals can, itself, qualify as an organization with a distinguished reputation, but it does not follow

that the tours and festivals are, themselves, functionally equivalent to organizations with distinguished reputations.

The Director observed that "the provided letters are not from current of former employers and therefore have no probative value under this criterion." This conclusion derives from 8 C.F.R. § 204.5(g)(1), which requires: "Evidence relating to qualifying experience . . . shall be in the form of letter(s) from current or former employer(s)." *See also, generally,* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), which states:

> letters from persons with personal knowledge of the significance of the person's leading or critical role can be particularly helpful . . . , so long as the letters contain detailed and probative information that specifically addresses how the person's role for the organization [or] establishment . . . was leading or critical. Evidence of experience must consist of letters from employers.

The Petitioner did not submit confirming evidence from officials of the entities that organized the tours and competitions. Instead, the Petitioner relied on recent letters from his manager, record producer, and others, along with biographical profiles that appeared in various publications, often years after the events the articles describe. Some of the articles, in different publications, are identical to one another, consistent with a common source such as a promotional press release. Some of the letters, too, include shared or very similar language. The identical language in the submitted letters undermines their probative value. Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

Letters from other sources, such as the Petitioner's manager, are not entirely without weight in terms of providing context, but the burden is on the Petitioner to establish that those third parties are in a position to attest to the critical nature of his roles with organizations and establishments that do not employ those third parties.

Here, we will discuss some examples of the Petitioner's claimed critical roles. The Petitioner asserted that he "performed nationwide in Australia during the [redacted] which featured musicians [redacted] and [redacted]" Promotional materials for the tour depict those four musicians, but not the Petitioner. The Petitioner posed with the four singers for a photograph, but the record does not provide further context. Materials in the record appear to indicate that that the Petitioner performed as an opening act.

Letters from the Petitioner's tour manager and publicist state that the Petitioner performed on the [redacted] but do not explain how his role was critical or how the tour itself qualifies as an organization or establishment that has a distinguished reputation. The tour manager asserted that the Petitioner's "performances were received with rave reviews at every tour stop he performed at," but the Petitioner did not submit any published reviews.

The Petitioner claimed a critical role through "singing and performing for [redacted] The Petitioner stated: "This is a national competition hosting 15,000 artists from across the country. The Petitioner was in the top 5 in the nation, out of 15,000 musical competitors" who were "competing for the chance to open at the [redacted] for famous singers and bands." The only

evidence the Petitioner submitted to support this claim was a letter from his publicist. The Petitioner submitted no documentation from the organization that conducted the competition to confirm that he participated and placed highly. The Petitioner's wording implies that he performed at the [redacted], but the record does not support this claim. Aside from the lack of corroboration, the Petitioner does not explain how placing highly in a competition amounts to a critical role for the organization that conducted that competition.

The Petitioner also claimed to have been "one of only four featured headliners at [redacted] the biggest musical event in [redacted] South Africa." The Petitioner submitted copies of two promotional fliers advertising [redacted] 2017" in [redacted] 2017. On one flier, the Petitioner is the only artist named and shown. On the other flier, his name is one of eleven listed. The only venue identified on either flier is [redacted]

The Petitioner submitted no published materials about the festival and no documentary evidence to confirm the significance of the festival. The Petitioner submitted a photograph of a large crowd at an outdoor music festival, with large South African flags visible, but the photograph includes no internal evidence to identify the occasion or the venue. The Petitioner's tour manager asserted that the Petitioner "performed in front of over 20,000," and that "the [redacted]. . . is of equivalence to a festival like Coachella," but the record includes no objective documentary evidence to support these assertions.

On appeal, the Petitioner also cites a letter from an executive of [redacted] who stated that she planned to discuss signing the Petitioner to the label. The Petitioner asserts that this "future signing with a music label" constitutes a critical role, but does not explain how the possibility of a future contract shows that he has performed in a critical role for a record company that has not yet signed him.

We agree with the Director that the Petitioner has not met his burden of proof to establish that he meets the regulatory requirements to satisfy the criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown recognition of his work that indicates the required sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

Much of the record consists of letters from individuals who have worked with the Petitioner in various ways. Some of these individuals are, themselves, prominent in the music and recording industries, but their personal opinions are not evidence of the broader recognition that the classification requires. The Petitioner has established individual episodes of success, such as his gold record in South Africa in 2019, but he has not shown that this success amounts to sustained national or international acclaim. The Petitioner claims that one of his recordings reached #1 in the U.S. charts, and a list of exhibits refers to "Billboard Chart Rankings," but the record shows that the Petitioner's record appeared not on any chart published by Billboard, but on the "Emerging 300 Artist" chart on the *Upcoming 100* website. The Petitioner did not establish any affiliation between *Billboard* and *Upcoming 100*, nor did the Petitioner establish the criteria for inclusion on the "Emerging 300 Artist" chart.

In all, the record does not have enough first-hand, contemporaneous, documentary evidence to show that the Petitioner has reached the top of his field and remained there, to warrant a conclusion that he has achieved sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.